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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 UNITED STATES OF AMERICA,

12 Plaintiff, Civ. S-05-0077 DFL
13 v. Cr. S-02-0134 DFL

14 JAMES ALLEN CORNERS, O R D E R

15 Defendant.

16 _____/

17 Defendant James Allen Corners moves under 28 U.S.C. § 2255
18 to vacate the judgment and conviction entered against him on May
19 24, 2004. Defendant was sentenced to a term of 24 months. As
20 part of the plea agreement, defendant expressly waived his right
21 to appeal or collaterally attack the judgment and sentence.
22 Corners now seeks a modification of his sentence based on the
23 Supreme Court's recent holding in United States v. Booker, --
24 U.S. --, 125 S.Ct. 738, 756 (2005). The government moved to
25 dismiss on three grounds: (1) the express waiver; (2) Corners has
26 failed to state a Booker claim; and (3) Booker does not apply

1 retroactively.

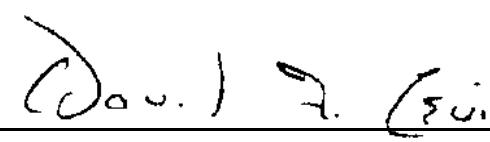
2 All three of the government's arguments are meritorious. As
3 to the first ground, express waivers of the right to bring a §
4 2255 motion are valid, unless the petitioner demonstrates that
5 the waiver was involuntary or uncounseled. See United States v.
6 Abarca, 985 F.2d 1012 (9th Cir. 1993); United States v. Pruitt,
7 32 F.3d 431 (9th Cir. 1994); Mason v. United States, 211 F.3d
8 1065 (7th Cir. 2000); United States v. White, 307 F.3d 336 (5th
9 Cir. 2002). Here, the written plea agreement contained an
10 express waiver, which the court expressly went over with Corners
11 when he pled guilty in open court. (Mot. Ex. 4 at 8.) As
12 Corners has not alleged that his plea was involuntary or
13 uncounseled, the express waiver bars this petition by Corners.

14 There is no need to discuss the additional grounds.

15 The government's April 29, 2005 motion to dismiss is GRANTED
16 and Corners's March 25, 2005 motion is DISMISSED.

17 IT IS SO ORDERED.

18 Dated: 9/14/2005

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22 DAVID F. LEVI
23 United States District Judge
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